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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/512,669	02/24/2000	Ulrike Jeck-Prosch	32140-153023	5754

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02/04/2002

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EXAMINER

CLEVELAND, MICHAEL B

ART UNIT

PAPER NUMBER

1762

DATE MAILED: 02/04/2002 14

Please find below and/or attached an Office communication concerning this application or proceeding.

A-9-14

Advisory Action

Application No.

09/512,669

Applicant(s)

JECK-PROSCH ET AL.

Examiner

Michael Cleveland

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 January 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached action.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 12,13,16-18,21,23,24,27-32,35-39 and 42.

Claim(s) withdrawn from consideration: 1-9.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DETAILED ACTION

1. The After Final Amendment will not be entered because it presents new issue for further search and consideration, such as whether the Markush groups are proper using the conjunction "or" and whether proposed claims 29 and 36 are identical to proposed claims 30 and 37.

Response to Arguments

2. Regarding the objections and rejections under 35 USC 112, the cancellations of claims 12-13, 16-18 and the amendment to claim 42 would be entered if presented in a separate paper and would overcome the rejections of those claims and the objections to claims 23 and 24.

Applicant's proposed amendments of "and" to "or" within the Markush groups of claims 21, 29, and 36 did not address the rejections. The rejections were to the language "...surface-treating a mono-, di-, and tri-basic..." It was in this phrase that the Examiner suggested changing "and" to "or". Alternatively, Applicant could resolve the issue by changing the language to "...surface-treating at least one of mono-, di-, and tri-basic...". Note that "and" is the recommended conjunction in such a use. Applicant is notified that merely making claims 30 and 37 independent may introduce new objections to the claims by making them substantially identical to claims 29 and 36, respectively.

Applicant argues that '325 does not teach surface treating because it teaches mixing, and that "mixing" should not be equated with "surface treating". Terms are given their broadest reasonable interpretation during examination. The term "surface treating" is reasonably inclusive of mixing of the binder and propellant to provide a dispersion of the propellant in the binder necessarily involves contact between (i.e., surface treating of) the propellant and binder. Applicant's arguments that the references ('757, '649) do not teach surface coating are unconvincing for at least the reason that the claims do not require "coating" but rather the broader term "surface treating".

Applicant argues that it is not Applicant's attempt to produce prior art homogeneous compositions. The breadth of the claims does not exclude the formation of homogeneous compositions of propellants in binders.

Applicant argues that '009 discloses other coating agents than those claimed is not relevant to the rejections based on '009. '009 is currently cited merely for its disclosure of

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known materials for the base propellant. Its teachings of coating agents do not obscure this conventional knowledge for which '009 is cited. Applicant's argue that '009 may not be used as a reference because it does not teach spraying nor a uniform spraying temperature. The argument is unconvincing because neither spraying nor a uniform temperature is claimed.

Applicant's arguments that '649 discloses an "explosive material" and not "a propellant charge embedded in a polymeric binder" are not convincing because the explosives are propellants and because '649 discloses a polymeric binder. Applicant's arguments that the binder of '649 is not used as a combustion moderator are unconvincing because the binders taught by '649 are the same as those claimed by Applicant and therefore must have the same properties. Further, use as a combustion moderator is not claimed. Applicant's arguments regarding the concentration are not relevant to the claims because the claims are not limiting as to composition.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cleveland whose telephone number is (703) 308-2331. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-3186 for regular communications and (703) 306-3186 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MBC

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February 1, 2002

Shrive Beck
SHRIVE P. BECK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700